



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2018-0741; FRL-9997-68-Region3]**

**Approval and Promulgation of Air Quality Implementation Plans;  
Delaware; Removal of Unnecessary Electric Arc Furnace Regulation  
and References to the Electric Arc Furnace Regulation**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving three state implementation plan (SIP) revisions submitted by the State of Delaware. One revision requests EPA remove from the Delaware SIP a state regulation governing emissions from Electric Arc Furnaces (EAFs) because there are no such sources in Delaware and the State has already repealed this regulation. Delaware's remaining SIP revisions amend two SIP approved regulations in order to remove references to the EAF regulation. EPA is approving these revisions to remove the EAF regulation and references to the EAF regulation in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This final rule is effective on [insert date 30 days after date of publication in the Federal Register].

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2018-0741. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose

disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Gaige, Air Quality Analysis Branch (3AD40), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-5676. Ms. Gaige can also be reached via electronic mail at [gaige.elizabeth@epa.gov](mailto:gaige.elizabeth@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On May 30, 2019 (84 FR 25024), EPA published a notice of proposed rulemaking (NPRM) for the State of Delaware. In the NPRM, EPA proposed to approve the removal from the Delaware SIP of a state regulation governing emissions from EAFs because there are no such sources in Delaware and the State has already repealed this regulation. In the May 30, 2019 NPRM, EPA also proposed to approve minor revisions to two SIP approved regulations to remove references to the EAF regulation. The formal SIP revisions were submitted by Delaware on May 25, 2018 and March 19, 2019.

### **II. Summary of SIP Revision and EPA Analysis**

On May 25, 2018, the State of Delaware, through the Department of Natural Resources and Environmental Control (DNREC), formally submitted a SIP revision requesting removal of state regulation 7 Delaware Admin. Code 1123 – *Standards of Performance for Steel Plants: Electric*

*Arc Furnaces*, from the Delaware SIP because there are no EAFs in Delaware and any future EAF constructed in Delaware would be subject to more stringent Federal and State regulations than 7 Delaware Admin. Code 1123.

The removal of 7 Delaware Admin. Code 1123 has no expected emissions impact on any pollutant because there are no existing EAFs in Delaware and the removal of the regulation is not expected to interfere with reasonable further progress, any NAAQS, or any other CAA requirement. Therefore, the removal of 7 Delaware Admin. Code 1123 from the Delaware SIP is in accordance with section 110(l) of the CAA.

On March 19, 2019, the DNREC formally submitted two SIP revisions requesting minor amendments to the SIP approved versions of 7 Delaware Admin. Code 1114 – *Visible Emissions*, and to state regulation 7 Delaware Admin. Code 1117 – *Source Monitoring, Record Keeping and Reporting*. In order to be consistent with the elimination of 7 Delaware Admin. Code 1123, the State has already changed 7 Delaware Admin. Code Sections 1114 and 1117 to remove the references to the repealed EAF regulation. Delaware’s March 19, 2019 SIP submittal requests that these changes be incorporated into the SIP approved versions of these regulations.

On May 30, 2019 (84 FR 25024), EPA published a NPRM proposing to approve the removal from the Delaware SIP of a state regulation governing emissions from EAFs because there are no such sources in Delaware and the State has already repealed this regulation. EPA’s NPRM also proposed approval of minor revisions to two SIP approved regulations referencing the repealed EAF regulation in order to remove the references to the removed EAF regulation. EPA’s rationale for EPA’s proposed action are explained in the NPRM and will not be restated here. EPA received a comment from DNREC asking that EPA correct errors in the NPRM. The

citations to 7 Delaware Admin. Code sections 1114 and 1117 were switched in the text of the proposed rule. The correct headings are “7 Delaware Admin. Code 1114 – *Visible Emissions*” and “7 Delaware Admin. Code 1117 – *Source Monitoring, Record Keeping and Reporting*.” EPA thanks DNREC for the comment and has used the correct numbers and headings in the Final Rulemaking Notice (FRN). DNREC also pointed to the “Incorporation by Reference” section of the NPRM where EPA mistakenly wrote “updated definition of VOC” instead of “updated EAF regulations.” EPA thanks DNREC for this comment and has not made the same error in the FRN.

### **III. Final Action**

EPA is approving removal of 7 Delaware Admin. Code 1123 – *Standards of Performance for Steel Plants: Electric Arc Furnaces*, from the Delaware SIP because it is outdated. Delaware requested removal of 7 Delaware Admin. Code 1123 because there are currently no such sources in the state of Delaware, and more restrictive State and Federal requirements are in place if a new EAF is constructed in Delaware in the future. EPA is also approving minor revisions to state regulation 7 Delaware Admin. Code 1114 – *Visible Emissions*, and to state regulation 7 Delaware Admin. Code 1117 – *Source Monitoring, Record Keeping and Reporting*. Both of these regulations contain cross references to the EAF regulation which Delaware has repealed, and these two SIP revisions remove the cross references.

### **IV. Incorporation by Reference**

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of newly amended state regulations 7 Delaware Admin. Code 1114 – *Visible Emissions*, and 7

Delaware Admin. Code 1117 – *Source Monitoring, Record Keeping and Reporting*. The previous versions of these regulations contained cross references to the repealed EAF regulation. Also in this document, as described in the finalized amendments to 40 CFR part 52 set forth below, EPA is finalizing the removal of the 7 Delaware Admin. Code 1123 – *Standards of Performance for Steel Plants: Electric Arc Furnaces* provisions of the EPA-Approved Delaware Regulations and Statutes from the Delaware State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region III Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully Federally enforceable under sections 110 and 113 of the CAA as of the effective date of this final rulemaking, and will be incorporated by reference in the next update to the SIP compilation.<sup>1</sup>

## **V. Statutory and Executive Order Reviews**

### **A. General Requirements**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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<sup>1</sup> 62 FR 27968 (May 22, 1997).

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

## **B. Submission to Congress and the Comptroller General**

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

### **C. Petitions for Judicial Review**

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action, approving the removal from the SIP of a state regulation governing emissions from EAFs because there are no such sources in Delaware and removing references to the EAF regulation in two other SIP approved state regulations, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: July 22, 2019.

Cosmo Servidio,  
Regional Administrator,  
Region III.



40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart I—Delaware**

2. Amend § 52.420, in the table in paragraph (c):

a. Under “1114 Visible Emissions” by revising the entries for “Section 1.0, General Provisions” and “Section 2.0 Requirements”;

b. Under “1117, Source Monitoring, Recordkeeping and Reporting”, by revising the entry “Section 3.0, Minimum Emission Monitoring Requirements for Existing Sources”; and

c. Removing the heading “1123, Standards of Performance for Steel Plants: Electric Arc Furnaces”, including the entries “Section 1.0” through “Section 5.0”.

The revisions read as follows:

**§ 52.420 Identification of plan.**

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(c) \* \* \*

**EPA-APPROVED REGULATIONS AND STATUTES IN THE DELAWARE SIP**

<b>State regulation (7 DNREC 1100)</b>	<b>Title/subject</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Additional explanation</b>
* * *	* * *	*	* *	
<b>1114 Visible Emissions</b>				
Section 1.0	General Provisions	9/11/2008	<b><u>Insert date of publication in the Federal Register,</u></b>	Remove the phrase, “except electric arc furnaces and their associated dust-handling equipment as set forth in 2.2 of this

State regulation (7 DNREC 1100)	Title/subject	State effective date	EPA approval date	Additional explanation
			<u>Insert Federal Register citation]</u>	regulation.”
Section 2.0	Requirements	9/11/2008	<u>[Insert date of publication in the Federal Register, Insert Federal Register citation]</u>	Remove the requirement of 2.2, which reads “2.2 The requirements of 2.1 of this regulation shall not apply to electric arc furnaces, and their associated dust-handling equipment, with a capacity of more than 100 tons which are governed by 7 DE Admin. Code 1123.”
* * * * *	<b>1117 Source Monitoring, Recordkeeping and Reporting</b>			
**	*	**	*	*
Section 3.0	Minimum Emission Monitoring Requirements for Existing Sources	9/11/2008	<u>[Insert date of publication in the Federal Register, Insert Federal Register citation]</u>	Revise 3.2 so that it reads, “3.2 Fuel Burning Equipment – Fuel burning equipment except as provided in 3.2 through 3.4 of this regulation...” And remove 3.5, “Electric arc furnaces – See 7 DE Admin. Code 1123.”
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